BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 6613 AND FORMER RULING DECISION NO. 131 AS PRECEDENT DECISIONS PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

ARTEMIO D. AREJA and Others
(Claimants-Respondent)
(See Appendix)

S.S.A. No. (See Appendix)

AMERICAN PRESIDENT LINES, LTD. and Others
(See Appendix)
(Employers-Appellant)

PRECEDENT BENEFIT DECISION No. P-B-212

FORMERLY BENEFIT DECISION No. 6613

FORMERLY RULING DECISION No. 131

STATEMENT OF FACTS

The employers appealed from Referee's Decision No. SF-6452 and Others as shown in the appendix, which is attached hereto and by this reference is made a part hereof, which held that the claimants were not subject to disqualification for unemployment insurance benefits under the provisions of section 1256 of the Unemployment Insurance Code, and that the employers' reserve accounts were not relieved of benefit charges under section 1032 of the code. In all of the cases, the parties stipulated that the record developed in Appeals Board Decision No. 6590, in the Matter of Calcagno, Appeals Board Cases Nos. 60-357 and 60-363 be incorporated as part of the record in these proceedings. Since it appears that the facts and circumstances in all of these cases are the same or similar; we believe that the substantial rights of all of the parties will not be prejudiced by consolidating them for purposes of decision under the provisions of 22 Cal. Adm. Code 5071.

(See Appendix)

All of the claimants concerned in these proceedings regularly earned their livelihood in the maritime industry performing services aboard vessels. All of the claimants are members of either the Marine Cooks and Stewards Union, the Sailors Union of the Pacific, or the Marine Firemen, Oilers, Wipers and Watertenders Union.

Prior to 1959 the unions had promulgated certain shipping rules regulating the periods of employment in order to spread the available work among the union members. These rules were not a part of the collective bargaining agreements then in effect between the unions and the various shipping companies.

It appeared to union officials and to the shipping companies, in view of recent decisions of the National Labor Relations Board, that the hiring practices then in effect might be questionable in a technically legal sense. In order to avoid possible penalties, the unions promulgated new shipping rules which were ratified by the memberships. Also, because of the possibility of penalties against them, the shipping companies, including the employers herein, adopted the new shipping rules as part of the collective bargaining agreements. The employers were represented in the negotiations for the collective bargaining agreements by the Pacific Maritime Association.

Effective January 1, 1959, the shipping rules of the Marine Cooks and Stewards Union were incorporated into the collective bargaining agreement between that union and the employers; effective February 9, 1959, the shipping rules of the Sailors Union of the Pacific were incorporated into the collective bargaining agreement between that union and the employers; and, effective December 15, 1959, the shipping rules of the Marine Firemen, Oilers, Wipers and Watertenders Union were incorporated into the collective bargaining agreement between that union and the employers.

Under the new shipping rules, insofar as applicable here, seamen were classified on the basis of length of employment in the industry into various groups having certain employment rights based upon seniority in the industry. Although the method of

computing seniority, the designation of classifications, and the duration of employment vary somewhat, the shipping rules included in the contract between the Marine Cooks and Stewards Union and the employers are typical. They provide in part as follows:

"6. Seniority employment rights are as follows:

"(a) A seaman with a Class A seniority rating may remain employed on any vessel to which he is shipped so long as he he desires to remain and the employer desires to retain him; . . .

"(b) A seaman with a Class B seniority rating shall be required to get off the vessel after completing a voyage during which he shall have completed 180 days of continuous employment.

"(c) A seaman with a Class C seniority rating or who was shipped on a non-seniority basis shall be required to get off the vessel on termination of the voyage during which he completes 60 days of continuous employment."

* * *

"9. Within each class of seniority rating seamen shall be shipped on a rotary basis in accordance with the length of time they have been unemployed. The man unemployed longest shall be shipped first . . . ."

* * *

"(f) Men will be shipped only if qualified for the job called.

"(g) In cases where jobs must be filled immediately and no qualified registrant having Class A, Class B, or Class C seniority rating bids for the job, the dispatcher shall ship the non-seniority registrant with the oldest registration who has the necessary qualifications for the job."

* * *

"12. All jobs called into the union hiring halls in Groups 1, 2 and 3, according to the Agreement between the Companies and the Union, shall be placed on the shipping board and announced over the loud speaker. Jobs shall be shipped in accordance with the following procedure:

* * *

"(b) The qualified registrant in the highest of Class A, Class B, or Class C seniority rating, with the oldest shipping date within his seniority rating, shall be shipped first."

* * *

"30. (a) These Shipping Rules shall apply to all registrants at the MCS-AFL hiring halls.

"(b) These Shipping Rules shall apply to all Signatory Employers. Every employer is a Signatory Employer under these rules who authorizes the Association to execute these rules on its behalf or who executes a counterpart of these Shipping Rules.

"31. These Shipping Rules may be amended . . . but no amendment in such form shall either modify the basic principle of fair and lawful rotary shipping in accordance with reasonable seniority ratings . . . ."

The employment of each of the claimants concerned herein terminated under the provisions of the shipping rules contained in the collective bargaining agreements and each filed claims for unemployment benefits in local offices of the department, effective on dates as shown in the appendix. The department held the claimants not subject to disqualification under code section 1256 and ruled that the employers' reserve accounts were not relieved of benefit charges under code section 1032.

It is the employer's contention that, since the shipping rules under which the claimants' employment terminated were initially union rules to which members adhered by their own choice and which were later included in collective bargaining agreements only because of the insistence of the claimants through their union representatives, the claimants, in effect, voluntarily left their most recent work without good cause. It is the claimants' contention that they were laid off by the employer because of the seniority provisions of the shipping rules.

REASONS FOR DECISION

Section 1256 of the Unemployment Insurance Code provides in part that an individual is disqualified for benefits if he has voluntarily left his most recent work without good cause. Section 1032 of the code provides that an employer's account may be relieved of benefit charges if it is ruled that the individual left the employer's employ voluntarily and without good cause.

In Benefit Decision No. 6590, the record of which has been incorporated into the record of the instant cases by stipulation of the parties, we considered the eligibility of a claimant for benefits whose employment terminated under the identical provisions contained in the collective bargaining agreement relating to the Maritime Cooks and Stewards Union herein involved. We reviewed our prior decisions involving the eligibility for benefits of seamen and indicated that where the collective bargaining agreement provided for continuing employment but the union shipping rules, not a part of the agreement, limited the period of employment and the claimant left work in compliance with the union rules, this was a voluntary leaving of work without good cause (Benefit Decision No. 5078). Contrariwise, where the employer took the initiative and terminated the employment relationship while the claimant was still willing to offer his services to the employer, we then held the termination of employment was to be viewed as a discharge (Benefit Decisions Nos. 5029, 5030, 5441, and 5446). We then considered the facts presented in Benefit Decision No. 6590 and stated:

"The present case differs factually from the situations previously considered in that

the shipping rules, in modified form, have become a part of the collective bargaining agreement of which the employer is a signatory."

* * *

"The collective bargaining agreement is equally binding upon both of the parties here herein (Barber v. California Employment Stabilization Commission, et al. (1954) (hearing denied February 24, 1955) 130 Cal. App. 2d 7, 278 P 2d 762). We must therefore consider the pertinent provisions of the agreement in order to determine the category within which the claimant's separation from work falls. Under the terms of the contract, the claimant agreed to furnish his services to the employer for a limited time; and the employer agreed to provide work for the claimant for the same limited time. Neither party could do more without violating the terms of the collective bargaining agreement. Under these circumstances, we conclude that the employment relationship ended in accordance with the terms of the agreement. Since there was no leaving of work voluntarily without good cause, and no discharge for misconduct connected with the work, section 1256 of the code is not applicable. The same conclusion applies to section 1030 of the code (Ruling Decisions Nos. 1 and 13). Therefore, the employer's account may not be relieved of charges under section 1032 of the code."

We further stated:

"The employer has cited Regal Pale Brewing Company v. California Unemployment Insurance Appeals Board, et al. San Francisco Superior Court No. 474268 in support of its contention that the claimant left his work without good cause. In Regal Pale there was a collective bargaining agreement which provided that the employees retire at designated ages. An employee retired as provided by the agreement; and the court held that he had voluntarily left his work.

"In our opinion, the principle expressed in Regal Pale is not yet settled in this state. A similar case (Douglas Aircraft Company, Inc. v. California Unemployment Insurance Appeals Board, et al., Los Angeles Superior Court No. 721144) is now under appeal to the appellate courts. Under the circumstances, we consider ourselves not obliged to extend the principles expressed in Regal Pale to the situation in this case."

Subsequent to the issuance of Benefit Decision No. 6590 (November 6, 1959), the District Court of Appeal entered its decision in Douglas Aircraft Company, Inc. v. California Unemployment Insurance Appeals Board, et al., 180 ACA 664, 4 Cal. Rptr. 723 (hearing denied by the California Supreme Court on June 29, 1960). Since this is a final decision, we believe that we are now obligated to review the position we took in Benefit Decision No. 6590 in order to determine whether the result we reached is consistent with the views expressed by the court in the Douglas case.

The claimant in the Douglas case had been an employee of Douglas Aircraft Company, Inc. since 1955. While she was so employed, she was a member of a union which entered into a collective bargaining agreement with the employer. This agreement contained a provision, initially proposed by the employer, specifying that a pregnant employee "shall not be permitted to remain at work . . . beyond the end of the fourth month of pregnancy; and that when it becomes necessary at said time for a female employee to discontinue her employment she may voluntarily terminate; or if she has been in the employ of the company for at least one year, she may apply for formal leave of absence. . . ." The claimant became pregnant and when she had worked the four months permissible under the agreement, she applied for and was granted a pregnancy leave of absence. She remained in good health and subsequently filed a claim for benefits. The principal issues to which the court directed itself were whether the claimant had "voluntarily" left her most recent work within the meaning of section 1256 of the code, and whether the charges made against the employer's account should be removed under section 1032 of the code. After concluding that the claimant had in fact "left her most recent work" the court stated:

> "The crux of the matter is whether or not the leaving herein was 'voluntary,' where the pregnant employee was required to leave her work by reason of the provisions of a collective bargaining agreement between her employer and a labor union of which she was a member. This question has never been passed upon by a court of appellate jurisdiction in California and the matter is one of first impression in this state. However, this and the closely related question as to whether an employee's leaving was 'voluntary' where the collective bargaining agreement required him to retire at a certain age have been passed upon by courts of record in New Jersey and Pennsylvania; and it is held in said states that the employee's leaving under such circumstances was 'involuntary' . . . ." (Citations omitted)

The court quoted with approval the following language of the Pennsylvania Supreme Court in Warner Co. V. Unemployment Comp. Bd. of Review, 153 A 2d 906:

> ". . . the collective bargaining agreement should not control in determining the eligibility of a retired employee for unemployment compensation; rather, the factual matrix at the time of separation should govern."

And in Smith v. Unemployment Compensation Bd. of Review (Pa. Supreme Court) 154 A. 2d 492:

> "Here, although the pregnancy provision is a binding condition of employment, it cannot in any way thwart the appellant's right to unemployment benefits. The appellant was willing and able to work; and when her employment was discontinued, it was against her will. Therefore, she did not 'voluntarily leave' work as far as her state-granted employment benefits are concerned."

The court further noted that, in the Smith case, it was held that it was immaterial whether the provisions prohibiting a female employee from continuing at work beyond the fifth month of pregnancy was a contractual part of the collective bargaining agreement or whether it was a private agreement between the employee and the employer.

Again, in Campbell Soup Co. v. Board of Review, etc. (N. J. Supreme Court), 100 A. 2d 287, the court stated:

> "If the inquiry is isolated to the time of termination, plainly none of the claimants left voluntarily in the sense that on his own he willed and intended . . . to leave his job. . . . They left because they had no alternative but to submit to the employer's retirement policy, however that policy as presently constituted was originated. Their leaving in compliance with the policy was therefore involuntary . . . ."

In the Douglas case, the court further stated:

> "There is not the slightest doubt, of course, that a collective bargaining agreement is ordinarily to be regarded as the union member's own voluntary act, and that the provisions of such a collective bargaining agreement are binding on an employee who is a member of the union as well as on the employer. The New Jersey and Pennsylvania cases all recognize the binding effect of a collective bargaining agreement between the employer and the employee inter se; and such is, of course, also the established law in California as respondent points out. (Chavez v. Sargent, 52 Cal. 2d 162, 197-198)"

* * *

> "The binding effect of the provisions of the collective bargaining agreement was not involved, but only the separate and

different question as to whether the employee . . . upon taking a required leave of absence for pregnancy in this case was entitled to statutory unemployment benefits subsequent to the retirement. The provisions of the collective bargaining agreement . . . were silent as to said matter; and, as stated in Smith v. Unemployment Compensation Bd. of Review, supra, 154 A. 2d 492, such contract cannot be construed to deprive an employee of a statutory right to unemployment compensation. Indeed, and as pointed out in Campbell Soup Co. v. Board of Review, etc., supra, 100 A. 2d 287, the provisions of a collective bargaining agreement cannot be construed as constituting a waiver of a statutory right to unemployment compensation without rendering such provisions illegal in New Jersey, as would also be the case in California under the provisions of section 1342 of the Unemployment Insurance Code."

There are grounds upon which Benefit Decision No. 6590 may be distinguished from the Douglas case. For example, in Benefit Decision No. 6590, the contract of employment was for a fixed and determinable period, whereas in Douglas, the contract of employment was for an indeterminate period of time. In Benefit Decision No. 6590, it was contemplated that there would be a complete severance of the employment relationship upon completion of the contract, whereas in Douglas, the parties contemplated only a temporary cessation of work with the expectation that the employee would resume her work following expiration of her authorized leave of absence. Despite these factual distinctions, we are of the opinion that the rationale of the Douglas case is applicable herein.

In the instant cases, as in Benefit Decision No. 6590, the provisions of the collective bargaining agreement required that the claimants "get off the vessel after completing a voyage" during which they shall have completed a fixed number of days of continued employment. Thus, the leaving of work was in compliance with the agreement and must, under the Douglas case, be regarded as involuntary. This being so, the claimants are not disqualified for benefits

under section 1256 of the Unemployment Insurance Code, and the employers' reserve accounts may not be relieved of benefit charges under section 1032 of the code. Benefit Decision No. 6590 is affirmed insofar as it holds that benefits were payable to the claimant, but is modified as to the reasons for decision in accordance with the foregoing.

DECISION

The decision of the referee is affirmed. The claimants are not subject to disqualification under section 1256 of the code and the employers' reserve accounts are not relieved of benefit charges under section 1032 of the code.

Sacramento, California, October 27, 1960.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ERNEST B. WEBB, Chairman

ARNOLD L. MORSE

WM. A. NEWSOM (Absent)

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6613 and Ruling Decision No. 131 are hereby designated as Precedent Decision No. P-B-212.

Sacramento, California, February 3, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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